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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASPER'S ELECTRONICS, INC.

Defendant.

Civil Action No.

06C 3542

JUDGE FILIP

MAGISTRATE JUDGE NOLAN

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action against defendant Casper's Electronics, Inc. ("Casper") for its violations of the provisions of the Clean Air Act relating to motor vehicles, 42 U.S.C. §§ 7521-7554, and the regulations promulgated under the authority of the Clean Air Act appearing at 40 C.F.R. Part 86.
2. In this Complaint, the United States alleges that defendant Casper manufactured, offered to sell, or sold motor vehicle parts or components, specifically oxygen sensor simulators,

whose effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design in violation of Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B) and its implementing regulations.

3. This action seeks an injunction pursuant to Section 204 of the Clean Air Act, 42 U.S.C. § 7523, requiring Defendant to cease the manufacture and sale of any automobile parts or components, including oxygen sensor simulators, whose effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design and also seeks a civil penalty of up to \$2,750 pursuant to Section 205(a) of the Clean Air Act, 42 U.S.C. § 7524(a), for each such part or component manufactured, sold or installed.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 204(a) of the Clean Air Act, 42 U.S.C. § 7523(a), and 28 U.S.C. § 1331, 1345, and 1355.

5. Venue is proper in the Northern District Court of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1391(b) and 1395(a), because some of the violations alleged herein occurred within this judicial district and because Defendant conducts business out of its headquarters within this judicial district.

#### THE DEFENDANT

6. Defendant Casper's Electronics, Inc. is an Illinois corporation headquartered at 1333 Wilhelm Road, Mundelein, Illinois 60060.

7. Defendant is a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

#### STATUTORY AND REGULATORY FRAMEWORK

8. "Motor Vehicle" is defined in Section 216(2) of the Clean Air Act, 42 U.S.C.

§7550(2) as "any self-propelled vehicle designed for transporting persons or property on a street or highway."

9. "Person" is defined by Section 302(e) of the Clean Air Act, 42 U.S.C. §7602(e) to include a "corporation...and any officer, agent, or employee thereof."

10. Pursuant to Section 202(m) of the Clean Air Act, 42 U.S.C. §7521(m), EPA was required to promulgate regulations requiring motor vehicle manufacturers to install on their vehicles diagnostic systems capable of identifying the deterioration or malfunction of emission-related systems on their vehicles, including catalytic converters and oxygen sensors, alert the vehicle owner to the problem with the emission-related systems, and electronically store information pertaining to the emission-related problem.

11. At 40 C.F.R. §§ 86.094-17 and 86.099-17, EPA promulgated regulations for motor vehicles manufactured after 1994 and 1999, respectively, that required motor vehicles to have numerous devices or elements of designs that, working together, can detect problems with the vehicle's emission-related systems, alert consumers to these problems, and store malfunction information about them.

12. An on-board diagnostic system, oxygen sensor downstream of the catalytic converter ("post converter oxygen sensor"), malfunction indicator light (also known as "check engine light" or "service engine soon light"), and on-board diagnostic trouble code storage system are emission related devices or elements of design pursuant to 40 C.F.R. §§ 86.094-17 or 86.099-17.

13. Pursuant to Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), it is illegal for:

any person to manufacture or sell, or offer to sell, or install, any part or component

intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

14. Persons violating Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C.

§ 7522(a)(3)(B), can be subject to an injunction pursuant to Section 204 of the Clean Air Act, 42 U.S.C. § 7523.

15. Persons violating Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C.

§ 7522(a)(3)(B), can be subject to a civil penalty of up to \$2,750 pursuant to Section 205(a) of the Clean Air Act, 42 U.S.C. § 7524(a) and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note), 61 Fed. Reg. 69,360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at 40 C.F.R. Part 19, for each such part or component sold or installed.

#### CLAIM FOR RELIEF

16. Defendant manufactured, offered for sale, and sold, and continues to manufacture offer for sale, and sells, parts or components for motor vehicles, as that term is defined in Section 216(2) of the Clean Air Act, 42 U.S.C. § 7550(2).

17. Defendant has manufactured, and continues to manufacture, motor vehicle parts or components within the meaning of Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), including oxygen sensor simulators.

18. Defendant has offered for sale, and continues to offer for sale, both to third party resellers and direct to the public, motor vehicle parts or components within the meaning of

Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), including oxygen sensor simulators.

19. Defendant has sold, and continues to sell, both to third party resellers and direct to the public, motor vehicle parts or components within the meaning of Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), including oxygen sensor simulators.

20. An oxygen simulator emulates the signal that an oxygen sensor provides to a vehicle's on-board diagnostic system when the vehicle's catalytic converter is functioning properly, even when the catalytic converter is defective or has been removed.

21. A principal effect of the oxygen sensor simulators manufactured, sold, and offered for sale by Defendant is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design in violation of Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), and of its implementing regulations.

22. Laboratory testing and other information gathered by the Environmental Protection Agency revealed that the oxygen sensor simulators manufactured, offered for sale, and sold by Defendant bypass, defeat, or render inoperative emission related devices or elements of design installed on a motor vehicle in compliance with regulations under Title II of the Clean Air Act, including the on board diagnostic system, post-catalytic converter oxygen sensor, malfunction indicator light, and on board diagnostic trouble code storage system.

23. Defendant knows or should know that the oxygen sensor simulators it manufactured, offered for sale, and sold, and that it continues to manufacture, offer for sale, and sell, bypass, defeat, or render inoperative emission-related devices or elements of design of a motor vehicle, including the on board diagnostic system, post-catalytic converter oxygen sensor, malfunction indicator light, and on board diagnostic trouble code storage system.

24. Defendant is liable for the manufacture, offering for sale, and sale of, motor vehicle parts or components that bypass, defeat, or render inoperative emission related devices or elements of design, pursuant to Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B).

RELIEF REQUESTED

WHEREFORE, Plaintiff the United States of America, respectfully requests that this Court:

- A. Order, pursuant to Section 204 of the Clean Air Act, 42 U.S.C. § 7523, Defendant to cease the manufacture, offering for sale, and sale of, all motor vehicle parts and components, including but not limited to oxygen sensor simulators, that bypass, defeat, or render inoperative a motor vehicle emission related device or element of design.
- B. Assess a civil penalty, pursuant to Section 205(a) of the Clean Air Act, 42 U.S.C. § 7524(a), of up to \$2,750 for each such part or component manufactured, offered for sale, or sold.
- C. Award the United States its costs in this action.
- D. Grant the United States such other relief as this Court deems just and appropriate.

Respectfully submitted,

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